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THE CLASSIFICATION OF CRIMES

JOHN W. MAC DONALD*

INTRODUCTION

This study is made for the Committee on the Simplification of the Penal Law of the New York State Commission on the Administration of Justice. "Simplification" is not an exact term and it is therefore important to define the objectives by which the writer has been controlled. The work concerns the substantive law of crimes, though of necessity it may have certain procedural implications. That it should be confined to the substantive law is a primary limitation, since a separate Committee of the Commission has been charged with the immediate study of Criminal Procedure.

The raw materials of this survey are the statutes and judicial decisions defining and punishing statutory crimes. We shall find that American criminal law in general has proceeded to a point where it puts most of its emphasis on statutes and codes; and our criminal law in New York is especially the product of legislation. Nor are the New York statutes the recent product of a long evolution of common law decision. Codification in the field in New York began at an early stage of our legal history. Definitions of crimes made in New York statutes of 1829 are still controlling. The criminological theories of 1829 were the foundations on which the Penal Law of 1909 was built.

The purposes of codification seem to be:

1. To bring together into one written chapter of the law a definition of the existing body of offenses.
2. To define exactly these offenses.
3. To prescribe appropriate penalties for violation.

If we grant that these objectives were properly achieved in 1829 and in 1849 for those periods, the law is not stagnant. Legislatures have met annually. New crimes have been created. No consistent scheme of classification or of penalties has been followed, and new provisions have been added haphazard, without sufficient thought beyond the immediate result to be obtained. The conditions, consequently, have become such that some effort toward re-ordering the chaos seemed imperative, and the Committee on the Simplification of the Penal Law was created for the task. It has decided upon three objectives:

1. The revision periodically necessary in a growing law. This is a study of form. Does the code contain all of the criminal provisions existing at a given time? Is the code consistent in its parts?

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2. A careful and impartial study of each of the offenses. Each provision is on trial with these points in mind:

- a. Is there a present social necessity justifying this section's existence?
- b. Does this section work well?
- c. Is the offense exactly stated?

3. A re-examination of the philosophy on which the code was based, in the light of advancing knowledge in other fields of human experience. This is particularly necessary in the penalty features of the statute.

These then are the ultimate objectives in this restudy of the Penal Law. Our completely finished product would be a redrafted statute, probably much shorter, prohibiting only those acts considered harmful to modern society.

What is the place of reclassification in this project?

The first survey made for the Commission's Committee on the Penal Law dealt specifically with the defects of the present general statute, illustrating the material with representative instances, and recommending a course to guide future study. Reclassification of offenses was a recommendation of that report. It is now considered that reclassification is the starting point of the work of simplification. Break down the present statute, the Penal Law of 1909, into its component parts, and collect from all other statutes of the state the definitions of criminal offenses. The mass of material is bewildering, but it is clear that the first task is a complete understanding of the relation of each offense to the other. If reconstruction could then proceed on the basis of an ultimately desirable classification, the interests of logical efficiency would be served. Thus it is that the reclassification of crimes has come to take a place of primary importance, and to constitute an appropriate first step in the reorganization of the material to be dealt with.

I. THE DEMAND FOR A NEW CLASSIFICATION

The Penal Law of the State of New York consists of one hundred and fourteen articles subdivided into sections varying in number in each article.¹ In the main, these articles deal with specific kinds of crime; and their arrangement constitutes practically the only classification of crime that exists in the penal law of the state at this time. This is said, of course, subject to the qualification that in general crimes are classified into two great classes on the basis of the punishment imposed: felonies and misdemeanors.² The arrangement of these

¹N. Y. LAWS 1909, c. 88, constituting chapter 40 of the Consolidated Laws as amended.

²N. Y. CONS. LAWS c. 40 (PENAL LAW) §2

articles, and hence the classification of crimes in our statute, has thus far been based on a strictly alphabetical sequence, determined by giving a name to a related group of crimes, or by taking the common law name of the crime and applying this name to a particular article. As might be expected, the result is neither intelligent nor intelligible, and sometimes is amusing. Nor is confusion confined to the Penal Law. Some four hundred other crimes are provided by statutes other than the Penal Law. Scattered through the other Consolidated Laws,³ the various practice acts,⁴ and the unconsolidated laws,⁵ this great mass of material has, of course, no classification whatever, and is unrelated to the crimes provided by the Penal Law itself.

For some time, commissions which have dealt with the enforcement of the criminal laws of the state have been asking for a study which would include the reclassification of crimes.⁶ In this they echo a demand made by writers on criminal law and criminology for many years. Recent studies of the administration of criminal justice in America have suggested the desirability of a thorough study of the substantive criminal law. Surveying criminal justice in Cleveland, Dean Roscoe Pound of the Harvard Law School wrote:—

"As a result of the several causes suggested above [i.e. the problem of enforcement; the demand for a concrete justice; the demand for individualization; the passing of the retributive theory; the increased regard for human personality; new developments in psychology and psychopathology] the criminal law of today, throughout the world, is made up more or less of successive strata of rules, institutions, traditional modes of thought and legislative provisions, representing different and inconsistent ideas of the end of criminal law, the purpose of penal treatment, and the nature of crime. This is true especially in Anglo-American criminal law. With us all stages of development and all theories and all manner of combinations of them are represented in rules and doctrines which the courts are called upon to administer. Indeed, all or many of them may be represented in legislative acts bearing the same date. The result is that our criminal law is not internally consistent, much less homogeneous and well organized."⁷

³Most of this uncodified legislation is found in other chapters of the Consolidated Laws. This study did not include sections providing a statutory penalty.

⁴What substantive criminal sections there are in the practice acts are located in the Code of Criminal Procedure.

⁵This term included only unconsolidated general laws. The study did not include any local laws or local ordinances.

⁶See *infra* note 11.

⁷POUND AND FRANKFURTER, *CRIMINAL JUSTICE IN CLEVELAND* (1922) pp. 588, 589.

In another connection, the same author comments:

"Coke made no attempt to systematize this material, even to the extent of an alphabetical arrangement. . . . In the Third Institute he did no more than lump the existing materials under each specific offense, taking up each head, apparently, in the order in which he ran upon it in his foragings in the books. Such system as there is in our substantive criminal law begins with Hale, a generation later.

In Coke's disorganized treatise, along with expositions of murder, burglary, robbery, larceny, and arson, which are authoritative statements of the common law today, one will find such survivals as heresy, witchcraft, multiplication (i.e. attempts at transmutation of metal), hunting at night, prophesying, spreading of rumors, and hue and cry, and such incidents of post-reformation religious struggles as receiving Jesuits and popish recusants, and bringing in papal bulls. Many diverse social conditions, diverse political conditions, diverse modes of thought, diverse conceptions of the general security are represented in this mass of formulated specific offenses. . . . The materials of the substantive American criminal law had from the beginning an unorganized, unsystematic, discordant character which they have retained ever since. . . . In comparison with Coke's Third Institute, the substantive criminal law in the fourth book of Blackstone is well systematized. There is a good general account of the scope of the criminal law, of the common-law conception of a crime, or the rationale of penal treatment. There are well defined general principles running through the whole subject. The several specific crimes are taken up in a logical sequence and are systematically expounded. . . . Had we gone forward on that basis, as we did in the development of the civil side of the law, there would be little of which to complain so far as concerns the body of precepts to be enforced."⁸

A former president of the American Institute of Criminal Law and Criminology wrote:

"There is greatly needed a study of the substantive criminal law, its relation to the common law and development therefrom, and from other forces which influenced the common law such as disputes with the Crown in the Seventeenth Century, Eighteenth Century political philosophy, anti-English prejudices following the Revolutionary War, and pioneer life and early social and economic conditions in this country. Such a review would be illuminating and of important advisory value in the task of harmonizing and standardizing present confusing differences in the criminal laws of various states."⁹

⁸POUND, *CRIMINAL JUSTICE IN AMERICA* (1930) pp. 101, 102; 109, 110.

⁹James Bronson Reynolds, *Criminal Justice, Its Simplification, Clarification and Better Adaptation* (1923) 6 JOURN. AM. JUD. SOC. 176.

A general secretary of the National Probation Association wrote:

"The criminal law as everyone knows, attempts to mete out punishments for each crime regardless of the many individual variations in motives and degrees of responsibility and the greatly varying needs of the offender. It sets up a rigid, impractical scheme, based on classical ideas of crime deterrence. Already it is being modified and will some day be repealed by a system more just and more scientific."¹⁰

In this state, since the publication of the Baumes Report of 1927, the Crime Commission annually recommended a study of the Penal Law of the State with especial reference to the possibility of reclassification.¹¹ The expression of the recommendation in the Report of the Crime Commission for 1929 is representative:

"Such a revision might and probably would reclassify many crimes, grouping them in other ways than at present, and perhaps along ways recognized as more scientific and more in harmony with modern conditions and requirements."¹²

The criticism of the existing classification, or lack of classification, is not confined to New York. The Judicial Advisory Council of Cook County, Illinois, is engaged on a revision of the Criminal Code, in which the reclassification of crime is of primary importance.¹³

A "Scientific" Classification

No one can read the demands of our legislative commissions without being impressed by the almost unanimous insistence on a classification which they choose to call "scientific." This demand has been made without any real consideration of the difficulties involved in complying with it. Neither the Baumes commission nor the Lewisohn commission felt that this matter was within the scope of their authority, and they were probably correct. It is evident, from the successive reports of the Baumes commission, that this body felt that the state was faced with a serious immediate problem of an increase in crime which could be met only with immediate remedies of the most drastic sort.

¹⁰Charles L. Chute, *Rational Crime Treatment* (1923) 67 AM. REV. OF REVIEWS, 400.

¹¹REPORTS OF THE CRIME COMMISSION, N. Y. LEGISLATIVE DOCUMENTS: NO. 94 (1927) p. 78; NO. 23 (1928) p. 22; NO. 99 (1929) p. 62; NO. 98 (1930) p. 35; NO. 114 (1931) p. 34. See also REPORT OF THE COMMISSION TO INVESTIGATE PRISON ADMINISTRATION AND CONSTRUCTION (1932) p. 40.

¹²REPORT OF THE CRIME COMMISSION, N. Y. LEGISLATIVE DOCUMENT NO. 99 (1929) p. 62.

¹³See REPORT OF THE COMMITTEE ON JUDICIAL ADMINISTRATION, MERCHANTS' ASSOCIATION OF NEW YORK (1931) p. 90, summarizing a section of the REPORT OF THE JUDICIAL ADVISORY COUNCIL OF COOK COUNTY, p. 17-22.

To that purpose the energies of the commission were properly directed. The Lewisohn commission came into being after a series of serious prison riots, and that body was given merely the authority to investigate prison administration and construction. Both bodies felt that part of the blame for the temporary condition which faced the state and upon which they were called to work, could be traced to the unsatisfactory state of the Penal Law itself, a jumble of inconsistencies, duplications, obsolete provisions, incomplete, disorganized and unclassified. Nevertheless, time and money were not available, even if the authority were present for them to do any revising or reclassifying. The need for it was so obvious, however, that both of the commissions pointed out the evil, and called for scientific classification.

What is meant by "scientific" as used in this connection? In our day the term "scientific" has become popular, but when used, its meaning is not always clear, and certainly it is not always uniform. For some time, we have been hearing of the social "sciences"; law, criminology, penology, sociology were to be, if they were not already, akin to the others. Eminent Europeans and learned Americans have been writing in the field, and have used this language. If a "scientific" penal code is demanded, we could relate our work to the demands of these academicians, and seriously, perhaps, something worthwhile would result. But "scientific" is not used here in the sense in which the experimental scientist uses it. The legal scientist is not searching for facts, immutable and unvarying; then seeking to obtain a law to govern the facts as found. Instead, our laws are forced upon us by various and everchanging influences, among them, the public opinion or policy of a given time. The present committee's task is that of classifying *laws*. The experimental scientist is classifying *facts*.

Our problem of classification is intimately related, also, to the purposes sought to be accomplished. In analyzing it, we must consider first of all the purpose of a written system of penal law. We must then consider the purposes of classification itself. If we can relate the finished product to those purposes, we have, it is submitted, fulfilled the end sought to be served when the term "scientific" is applied to the result.

For having the criminal law embodied in a written system, the chief argument has been the feeling that criminal acts should be specifically and expressly defined.

"In nearly all modern states we find comprehensive statutes which purport to cover in one legislative act all important offenses by defining them and specifying the punishment of each. England stands out as a jurisdiction which has never en-

acted such a criminal code; but by a series of enactments beginning in 1861, statutory form has been given to the law relating to practically all the crimes that engage the attention of the courts, and only few minor and obscure offenses continue to be punishable on a common law basis.

"Of the American criminal codes, some recognize the continuing punishability of unspecified common law offenses, while others follow the principle which continental jurists express by the maxim, *nulla poena sine lege*; but even where in theory the common law survives, it is of slight practical importance. The opposition to the recognition of the unwritten common law as authority for the punishment of crimes has always been strong in America, and has been a factor in the rise of the doctrine that the United States as a federal government has no common law.

"... The practical necessity of having a statutory basis for the punishment of serious offenses is so obvious, that for the specification of crimes the unwritten law can no longer be regarded as a serious rival of statute law. The choice lies between a series of statutes such as we find in England, and a code. If the task is well performed, the comprehensiveness and unity of a code is a superior form of expression; but this superiority is jeopardized if there is a habit of either sporadic outside legislation dealing with crime, or of unsystematic and piecemeal code amendment."¹⁴

As Dean Pound has put it:

"In criminal law statutes in form hold the first place. They have come to define all specific crimes except in some states where the doctrine of common-law misdemeanors is still in force; and even there the tendency is toward minute legislative specification of particular misdemeanors."¹⁵

Our own Penal Law declares: "This chapter specifies the classes of persons who are deemed capable of crimes, and liable to punishment therefor; defines the nature of the various crimes; and prescribes the kind and measure of punishment to be inflicted for each."¹⁶ And again: "No act or omission begun after the beginning of the day on which this chapter takes effect as a law, shall be deemed criminal or punishable, except as prescribed or authorized by this chapter, or by some statute of this state not repealed by it."¹⁷

Thus there is no longer any common law crime in this state.¹⁸ Yet we are so inconsistent in our definition, so hesitant in our presumption, that we include section 43: "A person who wilfully and wrongfully

¹⁴ERNST FREUND, LEGISLATIVE REGULATION (1932), 10, 11.

¹⁵ROSCOE POUND, CRIMINAL JUSTICE IN AMERICA, (1930) pp. 142, 144, 145.

¹⁶N. Y. CONS. LAWS c. 40 (PENAL LAW) §20.

¹⁷N. Y. CONS. LAWS c. 40 (PENAL LAW) §22.

¹⁸People v. Knapp, 206 N. Y. 373, 99 N. E. 841 (1912).

commits any act which seriously injures the person or property of another, or which seriously disturbs or endangers the public peace or health, or which openly outrages public decency, for which no other punishment is expressly prescribed by this chapter, is guilty of a misdemeanor."¹⁹ As Judge Werner said in *People v. Tylkoff*, this section is "obviously one of those 'dragnet' laws designed to cover newly invented crimes, or existing offenses that cannot be readily classified or defined."²⁰

Nevertheless and despite section 43, it would seem that the purpose of our written penal code is to give a comprehensive, unified, complete statement of acts that are prohibited by the state, and where the prohibition is enforceable by a penal sanction. It is then well to remember Professor Freund's warning: "but this superiority [i. e., of a code over frankly sporadic legislation] is jeopardized if there is a habit of either sporadic outside legislation dealing with crime, or of unsystematic and piecemeal code amendment."²¹ New York has had much experience with both of these jeopardizing habits.

Turning now from the purpose of a written penal code to that of a reclassification of crimes, the object of the latter has been expressed by Freund to be:²²

1. For the purpose of keeping criminal statistics. "It is here that there is the most urgent demand for scientific definition and classification."²³
2. For the purpose of dealing with juvenile delinquents. "Here there is already a tendency to supersede the ordinary categories of offenses by the more subjective circumstances and motives of the individual act."²⁴
3. For determining methods of treatment after conviction, "i.e. after the system of specific offenses has fully accomplished its purpose of protecting the liberty of the individual against an undue or arbitrary extension of punishable acts."²⁵

A fourth purpose might seem to be even more important: to obtain a systematic and unified system of criminal law, to be used thereafter for checking defects, inconsistencies, duplications, obsolete provisions, etc.; and to minimize the possibility of destruction of the purpose of the law by inept addition and amendment. In the present study this purpose has been substantially the primary one.

Thus, to be fully "scientific" a proposed classification should seek to satisfy all of the following objectives:

1. Statistical; which seeks uniformity between New York and other states and countries.

¹⁹N. Y. CONS. LAWS c. 40 (PENAL LAW) §43.

²⁰12 N. Y. 197, 201, 105 N. E. 835, 836 (1914).

²¹*Supra* note 14.

²²Freund, *Classification and Definition of Crimes* (1915) 5 JOURN. CRIM. LAW AND CRIMIN. 807, 821.

²³*Ibid.* p. 821.

²⁴*Ibid.*

²⁵*Ibid.*

2. Sociological; to provide a classification to study the phenomenon of crime as it relates to the individual offender.

3. Penological; to utilize a classification which might assist in the determination of general punishments, and assist in the development of a scientific theory of punishments.

4. Legal; to obtain a systematic scheme of offenses, well organized, in order to avoid defects in the law.

5. From the point of view of the practicing lawyer, a fifth legitimately might be added; to provide a convenient method of organization to aid the lawyer in his search for the law. One might call this ease of reference.

It was to this fifth purpose that New York abjectly surrendered when it chose the alphabetical classification. What is there easier than to look for Abortion under the "A's" and Forgery under the "F's"; but is it so easy to look for Prostitution under Women in the "W's"? It is submitted that ease of reference, even if it were attained, is not necessarily the test of a good classification. A good index is worth more than a table of contents for this purpose. We may object to putting cock fighting under "Offenses against Real Property, and Malicious Mischief", as was done in a proposed code in Pennsylvania, a few years ago;²⁸ but to be perfectly "scientific" we should not do it on the ground that it is difficult to find "cock fighting" in the statute.

Conclusion as to the need for a reclassification of crimes

It must be recognized that some of the purposes listed just above are not at all times easy to reconcile with one another. The purpose of criminal statistics depends on the objects and needs of those who propose to use them. One investigator, for instance, would like to get the statistics of crime as related to a particular section of the law; the International Association of Chiefs of Police may not be interested in the same sections. Those who are interested in the juvenile delinquent as a criminological study, and who would propose a classification for this study, would get entirely different results from those who are interested in commercial crime as represented by the criminal of the type of Al Capone.

It will be the object of this paper to propose a framework for the Penal Law on the basis of a classification of the social interests which the criminal law is designed to protect. But it is necessary to get before us, first, a study of the present New York classification and its history. This, then, is a secondary topic which will now be developed as a background for the proposed classification.

²⁸See REPORT, CRIMES SURVEY COMMITTEE, LAW ASSOCIATION OF PHILADELPHIA, 1926, p. 48.

II. THE PRESENT NEW YORK CLASSIFICATION AND ITS HISTORY

Up to the time of the Revised Statutes of 1828, the New York criminal law was to be found in sporadic legislation, which was not in the slightest degree collected or codified. On December 10, 1828, Chapter I of Part IV of the Revised Statutes was passed by the senate and assembly, and was approved by the Lieutenant Governor, the then Governor Clinton, having died.²⁷ This criminal code, if such it can be called, is like our present one in that the basis of classification was the gravity of the particular offense. We still recognize this distinction. Felonies are crimes punishable by death or by imprisonment in a state's prison; misdemeanors are other crimes.²⁸ We do not allow this distinction full sway, however; we do not divide our penal law into two parts, one for felonies, one for misdemeanors. Obviously, if our ideal is ease of reference, we could not. The law by its very bulk and magnitude forbids this. Under the Revised Statutes of 1828 and subsequent revision, however, the division was as follows:

Title I. Crimes punishable by death.

Title II. Offenses against the person punishable by imprisonment in a state prison.

Title III. Offenses against property punishable by imprisonment in a state prison.

Title IV. Offenses against the administration of justice punishable by imprisonment in a state prison.

Title V. Offenses against the public peace and public morals and other miscellaneous offenses punishable by imprisonment in a state prison.

Title VI. Offenses punishable by imprisonment in a county jail and by fines.

It must be admitted that some merit can be found for a classification on the basis of gravity of the offense. If the criminological theory underlying the penal law is the classical practice of looking to the offense rather than the offender,²⁹ obviously then, offenses considered to be of equal degree of gravity should be grouped together. This was done; but it was necessary to redivide the state's prison offenses on another basis, due to the fact that there were so many more felonies than misdemeanors in 1828. The necessity of redividing misdemeanors came when their number grew to large proportions. When the reclassification of misdemeanors became necessary, as

²⁷N. Y. LAWS 1828, c. 20, §4.

²⁸N. Y. CONS. LAWS c. 40 (PENAL LAW) §2.

²⁹For a discussion of the influence of such theories of punishment on penal codes, see Glueck, *Principles of a Rational Penal Code* (1928) 41 HARV. L. REV. 453.

felonies were already reclassified, the grouping on the basis of the gravity of the offense was abandoned.

The State used the Revised Statutes until 1881, when the Penal Code was adopted. Its preparation had extended over a long period. As early as 1846 the Constitution of that year had directed the legislature to reduce the whole body of the law of the state to a written systematic code.³⁰ The Field Code of Procedure of 1848 (Civil) was the result of this direction.³¹ The Code of Criminal Procedure was reported by the Practice Commission in 1849, revised in 1879 and adopted in 1881.³² The Penal Code was reported in 1865, revised in 1879 and adopted in 1881.³³

The classification adopted in this Penal Code of 1881 was very complicated. It included the following heads:

- I. Treason. (*Title IV*)
- II. Offenses against the elective franchise. (*Title V*)
- III. Offenses by and against the executive power. (*Title VI*)
- IV. Offenses against the legislative power. (*Title VII*)
- V. Offenses against public justice. (*Title VIII*)
 - a. Bribery
 - b. Rescues
 - c. Escapes
 - d. Forgery of records, etc.
 - e. Perjury
 - f. Falsifying evidence
 - g. Other offenses
 - h. Conspiracy
- VI. Offenses against the person. (*Title IX*)
 - a. Suicide
 - b. Homicide
 - c. Maiming
 - d. Kidnapping
 - e. Assaults
 - f. Robbery
 - g. Duels
 - h. Libel
- VII. Offenses against the person and against public decency and good morals. (*Title X*)
 - a. Religious liberty
 - b. Rape, abduction, carnal abuse of child, seduction
 - c. Abandonment
 - d. Abortion
 - e. Bigamy, incest, crime against nature
 - f. Violation of sepulture
 - g. Indecent exposures

³⁰CONSTITUTION OF THE STATE OF NEW YORK (1846) Art. I, §17.

³¹N. Y. LAWS 1848, c. 379; N. Y. LAWS 1849, c. 438.

³²N. Y. LAWS 1881, c. 442.

³³N. Y. LAWS 1881, c. 676.

- h. Lotteries
- i. Gaming
- j. Pawnbrokers
- VIII. Other Offenses. (*Title XI*)
- IX. Offenses against public health and safety. (*Title XII*)
- X. Offenses against public peace. (*Title XIII*)
- XI. Offenses against the Revenue and Property of the State. (*Title XIV*)
- XII. Offenses against Property. (*Title XV*)
 - a. Arson
 - b. Burglary
 - c. Forgery, counterfeiting
 - d. Larceny, embezzlement
 - e. Extortion
 - f. False personation
 - g. Destruction of ships and vessels
 - h. Destruction of insured property
 - i. Weights and measures
 - j. Insolvency by individuals
 - k. Insolvency by corporations, and other frauds in management
 - l. Frauds in sale of tickets
 - m. Frauds in connection with documents of title
 - n. Malicious mischief
- XIII. Cruelty to Animals. (*Title XVI*.)
- XIV. Miscellaneous Crimes. (*Title XVII*.)

Just what was the basis of this classification would be difficult to say. But at least a rough and ready grouping on the basis of social interests is suggested. The sanctity of the individual life, of private property, of public peace, of the existence of government, etc., are recognized. But how are *Title XI*, Other Offenses, and *Title XVII*, Miscellaneous crimes, to be justified? It is fair to say that as *Title XI* was first proposed by the Field Commission its title was more illuminating: "Other injuries to Persons."³⁴ Defects in the classification are visible at once. The relationship between *Lotteries*, *Gaming*, and *Pawnbrokers* and the other offenses set out in *Title X* is not apparent. A separate *Title XVI*, on *Cruelty to Animals*, is difficult to put into the scheme of social interests set out in this code. Is arson a crime against property, especially in view of the interests sought to be protected in the ease of arson in the first degree, which, under the Revised Statutes of 1828, was placed under *Title I*, Offenses punishable with death?³⁵

In this Penal Code of 1881, there are subdivisions which could be

³⁴See DRAFT OF A PENAL CODE FOR THE STATE OF NEW YORK, PREPARED BY THE COMMISSIONERS OF THE CODE: Albany, 1861, p. 149.

³⁵REVISED STATUTES: Part IV, Ch. I, Tit. 1, sec. 1.

distributed into fifty or sixty separate articles under an alphabetical arrangement. This fact and the number of sporadic amendments which came between 1881 and 1909, gives one immediately a clue to reasons why the group system was abandoned in the year 1909, when the criminal law of the state was again officially overhauled, in favor of a purely alphabetical arrangement. In their general note on the Penal Law, the 1909 consolidators wrote:

"In consolidated Penal Law, herewith submitted, there has been no effort to 'revise'. In a few instances sections have been divided, but these are invariably cases where a single section of the Penal Code has embraced distinct topics or subjects."³⁶

One example of what was done under the last sentence of this quotation was the separation of Subdivisions "e" of *Title VII* into three subdivisions separately: bigamy, incest, and crime against nature. Thus the Penal Code of 1881 became the Penal Law of 1909, merely by the turning of subdivisions of the Penal Code into distinct articles and arranging them alphabetically. That is all that was done in 1909. For instance, *Frauds in connection with the sale of passage tickets*, a subdivision of the title in the Penal Code dealing with offenses against property,³⁷ survives as an article in the Penal Law, *Passage Tickets*.³⁸ This latter is as unilluminating a topic as can be imagined. Said the board of consolidators:

"The penal law herewith submitted is a rearrangement of the Penal Code, without change of substance. The alphabetical plan has been followed for the arrangement of the materials, as best adapted to the character of the provisions of the law."³⁹

They said "best adapted", because the consolidators were faced with a poor classification, without underlying purpose, plus an enormous number of amendments, difficult to classify. Result: an alphabetical arrangement. Characterization for legislative purposes: "Best adapted to the character of the provisions of the law."

To sum up the criticism of this merely alphabetical arrangement, we quote from an authority on criminology:

"Let us now consider the acts themselves which have been and are stigmatized as criminal. We find ourselves before a bewildering array, because at one time or another a vast number of acts have been criminal. It is therefore impossible to prepare a

³⁶See Consolidators' General Note on Penal Law, reported in MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK, PENAL LAW BOOK 39, (1909) at p. 5.

³⁷N. Y. PENAL CODE (1881).

³⁸N. Y. CONS. LAW c. 40 (PENAL LAW) ART. 152.

³⁹REPORT OF THE BOARD OF STATUTORY CONSOLIDATION OF THE STATE OF NEW YORK (1907) vol. vi, Introductory note, p.3.

uniform category of crimes. In order to illustrate in a concrete instance the range of acts stigmatized, I will enumerate some of the acts which under given conditions are criminal according to the New York State Penal Code. [*Sic*, meaning the Penal Law of 1909.] Among these are abduction, abortion, adultery, anarchy, arson, assault, attempt to commit crime, bigamy, bribery and corruption, burglary, compounding crime, contempt of court, crime against nature, disorderly conduct, dueling, extortion and threats, forgery, fraud and cheats, gambling, homicide, incest, indecency, intoxication, kidnapping, larceny, libel, maiming, malicious mischief, nuisances, perjury and subornation of perjury, prizefighting and sparring, rape, riots and unlawful assemblies, robbery, sabbath-breaking, seduction, suicide, treason, usury.

"But a mechanical, alphabetical, enumeration of criminal acts does not furnish a clear picture of the kind of acts stigmatized by the criminal law."⁴⁰

So much for the history of our general subject in New York State. These experiences with categories of over a hundred years standing are our raw materials for a scientific or modern reclassification. Yet it is plain that they will not be of much assistance and little can be drawn from them except that they show the attempted classifications during the history of the topic so far. Substantially they may be reduced to three headings:

1. A classification based on the gravity of the offense.⁴¹
2. A classification based on fourteen categories, whose unity is debatable, and whose basis is unknown.⁴²
3. An alphabetical arrangement without classification.⁴³

All three experiences have been discredited. The arrangement of a new Penal Law must be sought from other examples. It will be the purpose of the next topic to discuss other models for a new classification. These models themselves are partly the result of the actual experiences of other states in the organization of their criminal statutes, and partly the offerings of those who advocate reclassification for special purposes.

III. MODELS IN A NEW CLASSIFICATION

A. THE CLASSIFICATIONS ALREADY IN USE IN OTHER JURISDICTIONS.

The statutes of other states reveal four different situations. First, we find states which group all of their crimes into several classes.

⁴⁰PARMALEE, *CRIMINOLOGY* (1918) p. 268.

⁴¹N. Y. REVISED STATUTES OF 1828, Part IV. ch. 1.

⁴²N. Y. PENAL CODE (1881).

⁴³N. Y. CONS. LAWS c. 40 (PENAL LAW).

Second, we find states which arrange their crimes alphabetically as New York. Third, we find states which attempt no classification or alphabetical arrangement. Fourth, we find states which group part of their offenses and attempt no classification or arrangement as to the remaining crimes. We shall consider each of these groupings *seriatim*.

*1. States Which Group Their Crimes into Several Classes.*⁴⁴

In the following discussion these classes have been numbered, but no names have been given to them beyond mere general headings. The character of the group will be seen from the local titles falling within the class. The schedule follows:

GROUP I.

Crimes against the sovereignty of the state.

Arizona, Arkansas, California, Connecticut, Florida, Indiana, Maine, Michigan, Minnesota, Montana, Rhode Island, Washington.

Crimes against the state and people.

Georgia

Crimes against governments (the government).

Massachusetts, North Carolina, New Jersey, West Virginia

Crimes against the government of the commonwealth.

Pennsylvania

Protection of the government of the state and United States.

Rhode Island

Crimes against the government and the supremacy of law.

Missouri

Treason.

Nebraska, Oregon

Crimes against State Government.

South Dakota

Anarchy and Sedition.

Colorado

Against the state, its territory and revenue.

Texas

GROUP II.

Against the elective franchise.

Arizona, North Carolina

Against suffrage.

Florida, Oregon, Texas

Against the purity of elections.

Indiana

⁴⁴The following states are considered to fall into this group:

Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Indiana, Montana, Maine, Massachusetts, Minnesota, Missouri, Michigan, North Carolina, New Jersey, Nebraska, Oregon, Pennsylvania, Rhode Island, South Dakota, South Carolina, Texas, Tennessee, West Virginia, Wisconsin, Wyoming, Washington.

- By and against the executive power of state.
Arizona, California, Montana
- Against the legislative power.
Arizona, California, Montana
- Against public justice.
Arizona, Arkansas, Colorado, Connecticut, District of Columbia, Indiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, North Carolina, Pennsylvania, Rhode Island, Tennessee, Texas, West Virginia, Wisconsin, Wyoming.
- By officers, in violation of public trusts.
Arkansas
- Against public justice and official duty.
Florida, Georgia, Oregon.
- Against pension laws.
Florida
- Against executive, legislative, and judicial departments.
Texas
- Against public property.
Texas
- By and against public officers.
Washington
- By person in office, affecting public trusts, and concerning elections.
Missouri
- Against revenue and property of state.
Florida, Montana, Arizona, California.
- Official negligence and misfeasance.
Florida
- Against public morality, decency, health, safety, convenience, trade, policy, suffrage and police.
Georgia

GROUP III.

- Crimes against the person.
Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Indiana, Maine, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Washington, West Virginia, Wisconsin, Wyoming.
- Against reputation.
Texas
- Against person and reputation.
District of Columbia
- Against lives and persons of individuals.
Michigan

GROUP IV.

- Against habitation of individuals.
Colorado, Georgia, Maine, North Carolina

Against property.

Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Indiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, Texas, West Virginia, Wisconsin, Wyoming.

Malicious mischief.

Arizona, California

Frauds and malicious mischief.

Colorado, Georgia

Cheats, swindlers.

Colorado, Georgia, Nebraska, Wyoming

Larceny and receiving stolen goods.

Maine

Frauds and false pretenses.

Connecticut

Honest dealing.

Indiana

Forgery and Counterfeiting.

Connecticut, Maine, Massachusetts, Michigan, Missouri, Nebraska, Pennsylvania, Rhode Island, West Virginia, Wyoming

Cheating by false pretenses, frauds, conspiracies, monopolies.

Maine

Malicious mischief and trespass.

Maine

Against personal property and fraudulent dealing thereof.

Pennsylvania

Against real property and malicious mischief.

Pennsylvania

Criminal Trespass.

North Carolina

Public property.

Connecticut

Malicious mischief.

Arizona, California

GROUP V.

Offenses against morality and decency.

Arkansas, Arizona, California, Florida, Maine, Minnesota, Montana, North Carolina, Oregon, Pennsylvania, Tennessee, Texas, Washington

Offenses against public morality, health and police.

Colorado

Chastity, morality and decency.

Florida, Massachusetts, Michigan, Rhode Island, West Virginia, Wisconsin

Against morals.

District of Columbia, Nevada, Wyoming

Against public morals and institution of marriage.

New Jersey

Against conscience and morality.

South Dakota

Against chastity.

Connecticut

Against humanity and morality.

Connecticut

GROUP VI.

Public health and safety.

Arizona, Arkansas, California, Minnesota, Montana, Nebraska, New Jersey, North Carolina, South Dakota, Washington, Wyoming

Public health, safety and convenience.

Florida, Oregon

Public health.

Indiana, Massachusetts, Michigan, Rhode Island, Tennessee, Texas, Wisconsin

Public health and safety and policy.

Maine

Public peace (and tranquility).

Arizona, Arkansas, California, Colorado, Georgia, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, North Carolina, South Dakota, Tennessee, West Virginia, Wisconsin

Public trade, policy, police and economy.

Florida

Public policy (and economy) and (trade).

Connecticut, District of Columbia, Indiana, Massachusetts, Michigan, Missouri, Oregon, Rhode Island, Tennessee, Texas, West Virginia, Wisconsin, Wyoming

Trade and commerce.

Texas, Tennessee

Policy, economy and health.

Pennsylvania

Peace and public property.

Rhode Island

Order and peace.

Missouri

Peace and safety.

Connecticut

Public morality, decency, health, safety, convenience, trade, policy, suffrage and police.

Georgia (See also Group II.)

In restraint of trade.

Michigan

GROUP VII. (An extremely miscellaneous collection.)

Against stock raiser.

Arizona

Game and fish laws, and miscellaneous.

California, District of Columbia

Defacing natural scenery.
 Colorado
 Cruelty to animals.
 Colorado, Michigan, Minnesota
 Labor.
 Texas
 Gambling, bucket shops, liquor.
 Maine
 Bucket shops.
 Rhode Island
 Desertion, non-support and bastardy.
 Maine
 Dangerous weapons.
 West Virginia
 Fugitives from justice.
 Wyoming
 Riots, disturbances of peace in small towns.
 Oregon
 Relating to public utilities.
 Michigan
 Liquors and narcotics.
 Oregon
 Regulation of traffic.
 District of Columbia
 Police regulations.
 Nebraska, North Carolina
 Miscellaneous.
 Arizona, Arkansas, District of Columbia, Maine, Michigan,
 Minnesota, New Jersey (miscellaneous misdemeanors),
 Texas, Washington

2. *States Which Arrange Crimes Alphabetically.*

The foregoing table considers only those states which have attempted to classify crimes into groups. The following states use an alphabetical arrangement, as New York: Alabama, Illinois, Louisiana, Maryland, Mississippi, Oklahoma.

3. *States Attempting No Classification or Alphabetical Arrangement.*

The following states practically make no classification even to the extent of an alphabetical arrangement: Delaware, Idaho, Iowa, New Mexico, North Dakota, Utah.

4. *States Grouping Some of their Offenses, but Attempting No Classification as to the Remaining Crimes.*

In Kansas, Nevada, New Hampshire, Ohio, South Carolina, Vermont, Virginia, and to a lesser extent in Idaho, there was an evident attempt made to group together certain offenses into one article. For example, some sort of title represents a collection of offenses against

the person. The plan, however, is not consistent. With a group of crimes collected under the heading *Offenses Against Public Justice*, there exists in Ohio another article of equal standing *Sabbath Desecration*.⁴⁵ Of course, the degrees of inconsistency are not the same in each state. The states in this fourth group are the borderland between the first type and the third type as heretofore set out. Some seem nearer to the third type, as Idaho; some seem nearer to the first type, as Vermont and Ohio. Such separations as these must be arbitrary.

On the other hand, Kentucky attempts no grouping of felonies, but classifies misdemeanors.

Conclusions as to Classifications Already Existing in Other States.

Notwithstanding these geographical variances, certain type classifications may be noted. One sees throughout the West the traces of the Field Code. In California and in Arizona the Field Code has survived almost as it existed in New York in 1881. This is true to a lesser extent in Montana. There is a type of classification, common to Massachusetts and New England, and which apparently spread from there to certain of the mid-western states. Certain of the southern states keep fairly well together.

One thing may be certain from this birdseye view of the practices in sister states: the determinant of all these classifications is the *type of crime* involved. This explains the inconsistencies. This explains the shifting categories. It explains the number of categories in one group heading. It explains the necessity for a miscellaneous "catch-all" group. It probably explains the sheer desperation which leads to a mechanical alphabetical classification, or to the lack of any classification at all. One point stands out: for any successful classification, there must be a uniform basis consistently applied to all offenses; and its theory cannot be the collation together of crimes of the "same type." There are in reality as many different types of crimes as there are crimes. Some other criterion must be found. The task, then, is to look at some of the other models of classification already in existence.

B. THE CLASSIFICATION IN USE IN STATISTICAL STUDIES

The classification in use in the statutes are, so to speak, classifications before the fact. Statisticians, criminologists, penologists, reform organizations, crime commissions, census workers, etc., who all need to get a common basis for considering the crime data of the

⁴⁵Cf. PAGE'S OHIO GEN. CODE (ANN.) Part Fourth, Tit. I, c. 8 and c. 13.

country use models which are classifications after the fact. The observers of social events take all of these unrelated offenses, put them into groups, for use in all sorts of studies. Their needs, in these various fields, give us various patterns for organizing penal topics.

Professor Sutherland in his book on Criminology states that "crimes are frequently classified for statistical purposes as crimes against the person, crimes against property, and crimes against public decency, public order, and public justice."⁴⁶ Obviously the whole range of possible crimes has not been covered. We have had experience with other attempted uses of these terms, and have found that there is a compelling necessity for setting up either new classifications according to type, or miscellaneous groups to cover as yet unclassified crimes. It may be said that one test of a good classification is the absence of a "catch-all" group.

In this state we are not without attempts at new groupings. In the *Report of the New York Joint Legislative Committee on the Coordination of the Civil and Criminal Practice Acts*, the following classification was made:⁴⁷

1. Offenses against the person.
 - abduction
 - assault
 - bigamy
 - manslaughter
 - murder
 - perjury
 - rape
 - robbery
2. Offenses against property with violence.
 - arson
 - burglary
3. Offenses against property without violence.
 - forgery
 - larceny
 - receiving stolen goods
4. Other offenses not yet reported.
5. Assault in third degree.
6. Intoxicating liquors.
7. Other misdemeanors.
8. Petit larceny.
9. Vagrants.
10. Violation of Liquor Tax Law.

This obviously is not a very satisfactory classification even for the

⁴⁶SUTHERLAND, *CRIMINOLOGY* (1924) p. 24.

⁴⁷REPORT, JOINT LEGISLATIVE COMMITTEE ON THE COORDINATION OF THE CIVIL AND CRIMINAL PRACTICE ACTS, N. Y. LEGISLATIVE DOCUMENT No. 84 (1926), at p. 33.

purely statistical purposes for which it was offered, much less for the purpose of drafting legislation.

In 1928, the subcommittee on Statistics reported to the Crime Commission of New York as follows:⁴⁸

"Throughout our report we have utilized a classification showing ten major groups of crime which have been arranged in order to lend themselves easily to combinations which it may be desired to make:

Crimes against the person.

Murder

Manslaughter

Assault

Sex Offenses

Crimes against property.

Robbery

Grand Larceny

Burglary

Forgery and Fraud

Crimes against the Public Welfare.

Carrying Concealed Weapons

All other crimes."

In 1929, the Crime Commission classified misdemeanors in a similar fashion. Their findings need not be reproduced. There were thirty-two different type misdemeanors. The thirty-second type included a group "all others".⁴⁹ For purpose of statistics of crime, this might be satisfactory; for purposes of legislation, it is as unsatisfactory as a lack of classification at all.

In the 1931 report of the Crime Commission of New York there is an extended study of crime among the 16-20 age group in New York City, prepared for the report of the subcommission on causes and effects of crime.⁵⁰ A map of the City of New York was prepared to show the prevalence of crime in geographical areas, and for this purpose the following schedule was used:⁵¹

I. Theft from the person

a. Robbery

b. Grand Larceny

1. Pickpocketing and jostling

2. Purse Snatching

⁴⁸REPORT OF THE CRIME COMMISSION, N. Y. LEGISLATIVE DOCUMENT NO. 23 (1928) at p. 72.

⁴⁹REPORT OF THE CRIME COMMISSION, N. Y. LEGISLATIVE DOCUMENT NO. 99 (1929) at p. 86.

⁵⁰REPORT OF THE CRIME COMMISSION, N. Y. LEGISLATIVE DOCUMENT NO. 114 (1931): THE YOUTHFUL OFFENDER by HARRY M. SHULMAN.

⁵¹*Supra* note 50 at 144.

- II. Property Theft
 - a. Grand Larceny
 - b. Auto Theft
 - c. Burglary
 - d. Unlawful entry
 - e. Forgery
 - f. Blackmail
- III. Assault on the person
 - a. Involuntary homicide
 - b. Felonious assault
 - c. Kidnapping
- IV. Voluntary Homicide
- V. Civic Offenses
 - a. sec. 1897 Penal Law (carrying revolver without license)
 - b. sec. 1752 Penal Law (unlicensed possession of narcotics)
 - c. Burglar's tools
- VI. Sex Offenses
 - a. Impairing morals of minor
 - b. Rape
 - c. Abduction
 - d. Seduction
 - e. Incest
 - f. Sodomy
 - g. Compulsory prostitution

In order to determine the frequency of particular types of crimes in the same age group, a study was also made of 3,829 arrests of males, and 134 arrests of females in the City of New York in 1929, classified by each of the five ages between 16 and 20, and further classified into groups of offenses. Practically the same classification is used, with some elaboration.⁵²

Assault

Felonious assault

Negligent homicide

Civic

(identical with the other classification)

Non-negligent homicide (called voluntary, *supra*)

Property crimes involving the person

Blackmail

Bribery

Extortion

Forgery

Larceny (purse snatching) *

Larceny (pick pockets)

Jostling

Kidnapping

Robbery

⁵²*Supra* note 50 at 115.

Property crimes
 Arson
 Burglary
 Business Trade Law
 Larceny, automobile
 Larceny, under \$50.00
 Larceny, over \$50.00
 Malicious mischief.
 Receiving stolen property
 Unlawful entry

Sex

(Identical with the previous classification)

Some interesting differences are noted. In the previous classification, the property crimes were divided in a different manner. There the emphasis was on theft *from* the person. Here it is property crimes *involving* the person. This accounts for the shifting members of the class. An interesting corollary is the inclusion of kidnapping as a *property* crime thus putting the emphasis, as is rarely done, upon the *motive* to the crime, i.e., the ransom.

In a study of all arrests in New York City in 1929-1930, adolescent and all ages, in order to determine the percentage of adolescent offenders by offenses, the 1931 report makes probably the most complete classification of all.⁵³ It follows:

- I. Offenses against the person.
- II. Offenses against chastity.
- III. Offenses against the family and children.
- IV. Offenses against regulations for public health, public safety and public policy.
- V. Offenses against the administration of government.
- VI. Offenses against property rights.
 - a. Miscellaneous
 - b. Unauthorized use of property
 - c. Destruction of property
 - d. Frauds, swindles and breaches of trust
 - e. Extortion
 - f. Robbery
 - g. Larceny from person by stealth
 - h. Larceny from the highway vehicles, etc.
 - i. Burglary
 - j. Sneaks from buildings
- VII. General criminality.

These tables continue at length and practically every imaginable offense is classified under them. A study is made, also, of minor offenses, to show the frequency of the offenses in the age group, 16-20, but no classification whatever is here attempted.⁵⁴ In this same 1931

⁵³Supra note 50 pp. 247-268.

⁵⁴Supra note 50 pp. 268-300.

Crime Commission report, a copy of the Department of Correction Schedule for statistical purposes is set out.⁵⁵ This schedule proceeds on a division between felonies and important misdemeanors, and is practically on an alphabetical basis.

A similar form of schedule, again suggested by the Commissioner of Correction, is given in the *Report of the Crime Commission of 1929*.⁵⁶ It distinguishes again between felonies and misdemeanors, stating eleven types of felonies, the eleventh being a large miscellaneous group, but gives no classification for misdemeanors. As an aid in the drafting of a "scientific" penal law, it has no value.

In Illinois in a statistical study of felony-cases passing through the office of the public prosecutor in the City of Chicago, a classification quite similar to the schedule of the Commissioner of Correction of New York is found. Likewise it has little value for present purposes.⁵⁷ The following classification is proposed in another study under the auspices of the Illinois Crime Survey:⁵⁸

1. Murder
2. Manslaughter
3. Felonious Assaults
4. Rape and Incest
5. Crimes against children
6. Burglary
7. Robbery
8. Larceny
9. Embezzlement
10. Receiving stolen property
11. Confidence game
12. Forgery
13. Perjury
14. Contempt of court
15. Conspiracy
16. Violation of liquor laws
17. Miscellaneous

An elaborate system of reporting criminal statistics has been suggested by the International Association of Chiefs of Police.⁵⁹ It follows:

⁵⁵*Supra* note 50 at 131.

⁵⁶REPORT OF CRIME COMMISSION, N. Y. LEGISLATIVE DOCUMENT NO. 99 (1929) p. 82.

⁵⁷THE ILLINOIS CRIME SURVEY: THE ILLINOIS ASSOCIATION FOR CRIMINAL JUSTICE IN COOPERATION WITH THE CHICAGO CRIME COMMISSION (1929) p. 292.

⁵⁸*Supra* note 57 at 116.

⁵⁹INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, UNIFORM CRIME REPORTING (1929) p. 50.

PART I. CLASSES

1. Felonious homicide
 - a. Murder and non-negligent manslaughter
 - b. Manslaughter by negligence
2. Rape
3. Robbery
4. Aggravated assault
5. Burglary, breaking and entering
6. Larceny-Theft
7. Auto Theft

PART II. CLASSES

8. Other assaults
9. Forgery and counterfeiting
10. Embezzling and fraud
11. Weapons, carrying, possessing, etc.
12. Sex offenses (except rape)
13. Offenses against family and children
14. Drug laws
15. Driving while intoxicated
16. Liquor laws
17. Drunkenness
18. Disorderly conduct and vagrancy
19. Gambling
20. Traffic and Motor Vehicle Laws
21. Other offenses
22. Suspicion

This classification is presented simply as a basis for the uniform reporting of crime statistics from each state to the federal Department of Justice as proposed.⁶⁰ Of its value for that purpose the writer has no information but it is submitted it would prove an unsatisfactory method of classification for the purpose of a revision of the law itself. Whatever justification from the statistical viewpoint there may be in differentiating *Part I and II*, there is none from the point of view of drafting penal legislation. The existence of section 21 lessens the value of the table. Furthermore, the table is far from complete.

Conclusion

It is submitted that the proposed model for the reclassification of our criminal statute will not come from these statistical tables. Several influences operate against the value of these studies for our uses:

⁶⁰For the suggestions of this Association as to the allocating of specific offenses to these classes, see p. 24-35. For a relating of the existing offenses of the New York Penal Law to these classes, see p. 354-359.

1. The purpose of one statistician in making up his class is not the same as the purpose of another. The Illinois Commission is concerned with felonies passing through the office of the public prosecutor or through the Supreme Court of Illinois. The International Association of Chiefs of Police is interested in statistics as giving an adequate picture of the crime situation as of a given time. The criminologist is interested in studies of crimes by males, crimes by females, crimes by adults, crimes by adolescents, juvenile delinquents, crimes during particular seasons of the year, commercial crimes, crimes of passion, etc., etc. To take a simple example: in the consideration of sex crimes by males, naturally rape will be an important factor; in the consideration of sex crimes by females, prostitution will hold a chief place. Naturally the classes drawn will be drawn with this purpose in mind.

2. All of these statistical classifications were made on the basis of the statutes now in force. Naturally, they tend to share the imperfections of the statutes themselves and are subject in a secondary sense to the criticisms of the statutes.

3. The statistical classifications tend to emphasize distinctions which may or may not be desirable; e. g., felonies and misdemeanors.

4. Statistical classifications tend to be too detailed to be of value.

Yet, there is one advantage in considering them. They reveal the goals and results which interest the statistician. If we can so design our classes to be reasonably consistent with the results sought by the student of social conditions we shall have greatly assisted the solution of social problems. In this connection, it will be valuable to remember both the classification proposed by the International Association of Chiefs of Police⁶¹ and the classification set out in the 1931 Report of the Crime Commission of New York.⁶²

On the other hand, it seems clear that the basic idea of the statistical classifications is to group crimes with crimes of the same type. This practice we have already discredited for the purpose of legislation; and we are driven then to consider other possible bases for classification. To discuss them is the next topic of this paper.

IV. THEORIES OF CLASSIFICATION AND CRITICISM

This topic will discuss the various theories of classification which have been proposed; compare them; criticise them; and endeavor to make use of them in leading up to a definite classification for use in the redrafting of the penal law. Two of the possible methods we have already rejected. We have seen examples of alphabetical

⁶¹See *supra* note 59.

⁶²See *supra* note 53.

classification, and have concluded that in reality it is no classification at all. We have examined groupings made on the basis of the similarity of various kinds of crimes, relating crimes of the same type together, and have found its results illogical. Several other methods are possible and have been proposed.

An "analytical" method,⁶³ which seeks to group crimes around some common element has been suggested. A simple illustration would be to relate all offenses in which a specific intent or state of mind is required, and to group together all crimes which are simply prohibited acts without regard to any intent. Or one could say that some acts of violence are penalized with the criminal sanction and should be grouped together; or that some acts of misrepresentation, etc., are so penalized, and should be so grouped.⁶⁴

The difficulty with this method, it seems, is the impossibility of comprehensiveness. Violence and misrepresentation come immediately to mind. The classification depends upon definite characterization, and it is a question whether criminal acts can be so definitely characterized as to make it useful. There is, too, the extreme possibility of duplication. Finally, the classification proposed would be so radical as to destroy its effectiveness as a statistical aid; it would, in fact, cross cut all types of crimes, with the result that it might obliterate completely the criminal law as we know it.

⁶³See *infra* note 76.

⁶⁴For experimental purposes, a grouping of all misrepresentation provisions in the New York Penal Law was made. With so many sections, each dealing with specific situations, the results indicate duplication, uncertainties, and conflicts. The Legislature has been so accustomed to passing *ad hoc* legislation that this situation is the result. The study made illustrates the desirability of reclassification and the use of general sections properly grouped, instead of specific sections alphabetically arranged. If this were done, the possibilities for a much shorter Penal Law are great. The results of the study follow:

1. Misrepresentations in connection with advertising or solicitation for sale contained in 28 sections.
 2. Misrepresentations in connection with authority to act contained in 25 sections.
 3. Misrepresentations in connection with sales in 35 sections.
 4. Misrepresentations to obtain property, value, or advantage under false pretenses in 53 sections.
 5. Misrepresentations to destroy another's advantage, rather than to assist the actor in getting an advantage, principally misrepresentations as to character in 21 sections.
 6. Miscellaneous commercial misrepresentations in 11 sections.
 7. Miscellaneous misrepresentations in 11 sections.
 8. Sections in which there is a question of improper classification under a misrepresentation subheading in 31 sections.
- Total number of sections involved are 215.

A somewhat similar scheme has been set forth by Mr. Gillin who proposes a classification on the basis of the factors entering into the commission of crimes as follows:⁶⁵

1. Economic Crimes.
 - Vagrancy
 - Theft
 - Professional Criminality
 - Robbery
 - Frauds
2. Sexual Crimes.
 - Prostitution
 - Adultery
 - Indecent Assault, rape
3. Crimes of Violence.
 - Assault (including all crimes against person)
 - Infanticide
4. Political Crimes.
 - Crimes of Administrators (officers)
 - Crimes against Administrators

The same objections, namely duplication and lack of comprehensiveness, which were leveled against the "analytical" groupings may be urged against this suggestion of Mr. Gillin.

Extending this study further, Brasol makes an elaborate classification of the factors entering into the commission of crime with the following result:⁶⁶

1. Offenses against public order.
 - Treason
 - Desertion
 - Anarchy
 - Election Frauds
 - Bribery
 - Abuse of Authority
 - Vagabondage
2. Offenses against private persons, individuals and entities.
 - a. Against bodily safety
 - Homicide
 - Injuries
 - b. Sexual Crimes
 - Murder (?)
 - Castration
 - Rape
 - Incest
 - Exhibitionism
3. Crimes against property.
 - Theft
 - Burglary and robbery

⁶⁵GILLIN, *CRIMINOLOGY AND PENOLOGY* (1926) p. 255.

⁶⁶BRASOL, *ELEMENTS OF CRIME* (1927) p. 372-377.

Fraudulent bankruptcy
 Forgery
 Frauds and Cheats
 Extortions
 Arson
 Perjury

Parmalee argues that there are methods of classification listed in the following divisions:⁶⁷

A. Crimes Classified as Acts

This is based on the distinction in English law between treason, felonies, and misdemeanors; or between indictable offenses (including those which admit of trial by jury), and petty offenses, (those which are tried by a justice of the peace without a jury). Parmalee says that "these classifications have been determined mainly by legal considerations, that is to say, by the different kinds of procedure used and the degrees of punishment inflicted."⁶⁸ He illustrates this type of classification also by the distinction in the French law between *crimes* (crimes), *delits* (misdemeanors), and *contraventions* (trespasses), and by the bipartite division of the Dutch law: *delits* (misdemeanors), and *contraventions* (trespasses).⁶⁹

B. "Functional Classification"

As illustrative he gives:⁷⁰

1. Protection of person, life and limb.
2. Protection of private property.
3. Protection of government and other public interests.

As illustrative of the functional classification, detailed:⁷¹

1. Crimes against public justice.
2. Crimes against public peace.
3. Crimes against public trade.
4. Crimes against public health.
5. Crimes against public policy.
6. Crimes against persons.
7. Crimes against property.
8. Attempts.
9. Solicitations.

This type reminds one of the classification of the Field Code and its modern successors.

⁶⁷PARMALEE, *CRIMINOLOGY* (1918) Chapter xvi.

⁶⁸PARMALEE, *supra* note 67 at 267.

⁶⁹PARMALEE, *supra* note 67 at 267.

⁷⁰PARMALEE, *supra* note 67 at 268.

⁷¹*Ibid.*

C. Functional Classification, based on collective feeling or sentiments violated by the criminal act.⁷²

He illustrates as follows:

1. Having general objects.
 - a. Religious sentiments
 - b. National sentiments
 - c. Domestic sentiments
 - d. Sentiments with regard to sexual relation
 - e. Sentiments with regard to work
 - f. Traditional sentiments
 - g. Sentiments with regard to the organ of common consciousness
2. Having individual objects.
 - a. Sentiment with regard to person
 - b. Sentiment with regard to private property
 - c. Sentiment with regard to groups of individuals

Parmalee says that this classification has the suggestion of a psychological basis, that it is rather vague, and seems to overlap in some cases.⁷³ He continues with:

D. A classification according to the relationships violated by the crime (rather than according to the material interest violated).

1. Parental and filial.
2. Sexual and conjugal.
3. State and citizen.

Parmalee says: "Such a classification of crimes would vary from time to time and from place to place. . . ." ⁷⁴ He concludes with:

E. A classification to a basis of the mental trait violated.

1. Arousing pugnacity.
2. Opposed sexual instinct, etc.

His criticism is that such a classification would be elaborate and complex and would require extensive knowledge of psychology and sociology, and that it would vary from time to time and from place to place with the varying of the influences involved.⁷⁵

Turning now to another author, Freund has added methods of classification, as follows:⁷⁶

- A. According to the interest attacked or endangered.
 1. Safety of state.
 2. Ordinary safety of person or property.

⁷²See DURKHEIM, *DE LA DIVISION DU TRAVAIL SOCIAL* (1893) p. 166-168; PARMALEE, *supra* note 67 at 270. ⁷³PARMALEE, *supra* note 67 at 270.

⁷⁴*Ibid.*

⁷⁵PARMALEE, *supra* note 67 at 271.

⁷⁶Freund, *Classification and Definition of Crimes* (1915) 5 JOURN. CRIM. LAW AND CRIMIN. 807, 822.

3. Purity of justice or administration.
4. Maintenance of government authority.
5. Common peace, order and decency.
6. Purity of sex relation.
7. Conformity to legislative policy.
- B. According to forms of delinquency.
 1. Disorderly conduct.
 2. Omission of duty.
 3. Disobedience.
 4. Abuse of authority.
 5. Corruption or seduction.
 6. Betrayal or breach of trust.
 7. Coercion.
 8. Threat.
 9. Violence.
 10. Stealth.
 11. Fraud or falsehood.
 12. Procurement, aid, or attempt.
- C. According to the circumstances mitigating or aggravating guilt.
 - a. Objective.
 1. Value of object, extent of danger or injury.
 2. Remoteness or proximity of danger.
 3. Specific relation to object or victim.
 4. Numbers.
 5. Openness or secrecy.
 6. Special contrivances.
 7. Atrocity, cruelty, helplessness of victim.
 - b. Subjective.
 1. Motive (gain, malice, fear, distress, altruistic motive).
 2. Abnormal state of mind.
 3. Vagueness or intensity of purpose.
 4. Temptation or provocation.
 5. Repentance and reparation.
 6. Habit.
 7. Profession.

Still other methods have been suggested. Bonger has classified crimes according to the motives of the offender, as economic crimes, sexual crimes, political crimes, and miscellaneous crimes (with vengeance as the principal motive).⁷⁷ Says Sutherland of this: "But no crime can be reduced to one motive. A desire for excitement or vengeance may be very important in such crimes as burglary, which Bonger has classified as an economic crime. The classification is clearly unsatisfactory."⁷⁸

⁷⁷Cited by SUTHERLAND, *op. cit. supra* note 46, p. 23-24, from BONGER, *CRIMINALITY AND ECONOMIC CONDITIONS* (1916) 536, 537.

⁷⁸SUTHERLAND, *op. cit. supra* note 46, p. 23-24.

Gillin has suggested a classification according to the procedure used on the trial and has characterized it as functional.⁷⁹ This is closely akin to a suggestion offered by Freund as a more perfect classification than those he had already outlined, in which he proceeds according to the great categories of the interest attacked or violated, *viz.*, the safety of the state, and maintenance of the authority of the government; the conformity to legislative policy; the purity of justice and administration; the maintenance of peace, security and good order; the purity of sex relation; the ordinary or common safety of person and property. From this elaboration the following groupings result:⁸⁰

1. Political Offenses.
2. Statute Violations.
3. Administrative Crimes.
4. Police Offenses.
5. Crimes against Morality.
6. Common or Ordinary Crimes.

With regard to this, Parmalee comments: "He [Freund] alleges that in this classification crimes have been grouped 'according to the great categories of the interest attacked or violated'. But it is difficult to discover, even with the aid of his own explanation,^{80a} any consistent principle underlying it, and it is obviously much confused."⁸¹

Still another classification was proposed by Hugh Lester. He casts aside the objective features which have so much engaged the makers of the previously listed categories, and calls for a more subjective approach:⁸²

"The underlying motive in working out this classification of crimes has been to obtain one which will furnish the maximum aid to the criminologist in his effort to decrease the amount of crime. What he needs is to understand the criminal. This classification has been prepared to reflect as much as possible the motive, character, and type of mind of the offender.

"Any scientific effort to improve criminal conditions requires the most exhaustive data in regard to the individual prisoner, including his previous environment, heredity and economic condition—information that can only be obtained by the installation in institutions throughout the country of scientific and uniform records. A mere classification of crimes in itself cannot show these factors. It should, however, be so prepared as to

⁷⁹GILLIN, *CRIMINOLOGY AND PENOLOGY* (1926) p. 16.

⁸⁰Freund, *supra* note 76, p. 322.

^{80a}*Ibid.* p. 823-826.

⁸¹PARMALEE, *supra* note 67, p. 269, n. 2.

⁸²Lester, *Classification of Crimes* (1924) 14 JOURN. CRIM. LAW AND CRIMIN. 593, 595, 596.

facilitate the obtaining of them, when our penal institutions are equipped with proper records. Such has been the aim in preparing this classification.

"The attempt to draft a scientific classification is much hampered by certain practical considerations. To be of present use, it must conform to conditions as they are—the lack of uniformity in the criminal statutes of various states, the necessity of utilizing terms and usages now employed in such statutes, and the probable inability to obtain satisfactory reports from the various institutions in the event of any radical departure from schedules as heretofore submitted.

"An effort has been made to profit by the inspiration supplied by the writings of thinkers upon criminal problems. Ideas have been drawn from classifications used in the various states of this country and in many foreign countries.

"This classification has been made as inclusive as possible, consistent with reasonable brevity. The prevalent plan of a division of the listed crimes into groups has been adhered to. This method gives certain statistical value to reported crimes, which are not included by the offenses catalogued.

"The numerous crimes, which can be described as attempts or conspiracies to commit other crimes, or assault with intent to commit another crime, are really distinct from such other crimes. However, separate classification of such attempts, conspiracies or assaults would unduly protract the classification; and they are intended to be included, where relevant, by the titles of the various crimes of which they are an attempt, conspiracy or assault to commit. The only departure from this plan of abridgement has been in the case of murder where it was thought important to reveal the number of victims who were actually killed."

The classification which Mr. Lester makes is in fact less subjective in character than might be supposed from his introducing paragraph and is as follows:

I. Crimes Against the Person

1. Murder
 - a. first degree
 - b. other
2. Manslaughter
3. Attempt, threat, or conspiracy to murder
4. Assault
5. Kidnapping
6. Other

II. Gainful Offenses Against Property with Violence.

1. Robbery
2. Breaking and entering
 - a. dwelling
 - b. shop, store, bank, office
 - c. warehouse, storehouse, factory

- d. freight car
- e. other
- 3. Possession of burglarous tools or implements
- 4. Other
- III. *Gainful Offenses Against Property Without Violence.*
 - 1. Larceny
 - a. from person
 - b. from house
 - c. from shop, store, bank, office
 - d. from warehouse, storehouse, factory
 - e. of motor vehicle
 - f. other
 - 2. Buying, receiving, or aiding, in concealment of stolen or embezzled property
 - 3. Embezzlement
 - a. by public officers or employees
 - b. other
 - 4. Fraud
 - a. cheats
 - b. violation of blue sky laws, fraudulent sale of securities, similar offenses
 - c. offenses against bankruptcy or insolvency laws
 - d. other
 - 5. Forgery
 - 6. Using property without permission
 - 7. Other
- IV. *Malicious Injuries to Property.*
 - 1. Incendiarism
 - a. arson
 - b. other fires
 - 2. Malicious mischief
 - 3. Obstructing passage of trains, injuring railroad property, similar offenses
 - 4. Trespassing
 - 5. Other
- V. *Offenses Against Chastity.*
 - 1. Crime against nature
 - 2. Incest
 - 3. Rape
 - 4. Seduction
 - 5. Adultery
 - 6. Fornication
 - 7. Bastardy
 - 8. Bigamy, polygamy
 - 9. Abduction
 - 10. Keeping, frequenting, or letting a disorderly house
 - 11. Prostitution
 - 12. Obscenity
 - 13. Violation of White Slave Act
 - 14. Other

VI. *Offenses Against Administration of Government.*

1. Perjury
2. Bribery
3. Contempt
4. Extortion
5. Resisting an officer, similar offenses
6. Escape, prison breach, rescue
7. Violating election laws
8. to 11. Federal crimes, immigration, counterfeiting, postal
12. Other

VII. *Offenses Against Society Not Otherwise Classified.*

1. Illegal carrying and discharge of weapons
2. Nuisance
3. Pure food and drug laws
4. Narcotic drugs
5. Liquor laws
6. Drunkenness
7. Disorderly conduct, breach of peace
8. Vagrancy
9. Gaming
10. City ordinances, not otherwise classified
11. Others

VIII. *Offenses Against Prisoner's Family.*

1. Contribution to delinquency
2. Cruelty to wife or child
3. Non-support

IX. *Offenses Peculiar to Children.*

1. Delinquency
2. Incurability
3. Truancy
4. Other

X. *Miscellaneous Offenses.*

1. All other offenses

It should be emphasised that this classification was drafted by Mr. Lester with the primary aim of assisting the criminologist in his collection and interpretation of criminal statistics. Many bases are suggested for the method. The classification can stand as illustrating the sort of information demanded by the statistician and as the type of classification designed to get that information.

One other suggested theory of classification demands attention. It is explained by Gillin from the writings of Roscoe Pound.⁸³ Modern jurisprudential thought defines law as one of the methods of social control, conceives of law as an aid in the protection of social interests,

⁸³GILLIN, *op. cit. supra* note 79, p. 16-23; Pound, *A Theory of Social Interests* (1920) 15 PUB. AM. SOC. SOC. 30.

and regards the criminal law as simply adding a penal sanction to the ordinary rule of law for the protection of a particular interest.⁸⁴ The definition of law is found in its aim. Its aim is the protection of social interests. This general approach has raised the inquiry: Why not a classification of social interests, and a classification of law on the basis of this classification? Or as Mr. Gillin has written:

"With the development of a more careful study of society, critical attention has been given to the question of crime. Such a study has made it possible to formulate a sociological definition of crime. It has also made imperative a reclassification of crimes on the basis of recent knowledge concerning society. In the light of this knowledge, it becomes apparent that the problems of crime are social problems, that crime is a phenomenon of social life. In considering how to deal with crime and criminals it is necessary to take into account human nature and the motives, interests, habits of people, customs, which have grown up in society, and the social machinery.

"In considering the problem of crime and its classification the question arises, where does it relate itself to the social forces, that is, the forces which operate in society? In classifying crimes by a legal scheme, account is taken of the certain interests menaced by crime, but these interests are considered to be individual interests. With the development of sociology, it has come to be seen that individual rights or demands grow out of social relationships and become social interests. (See Pound, *A Theory of Social Interests*, 15 *Pub. Am. Soc. Soc.*, p. 30.)

"The social interests have been variously classified. Small has named six fundamental sets of social interests. They are interests of health, wealth, sociability, knowledge, beauty, and rightness. On the basis of these groups of interests he explains all the activities of men. (Small, *General Sociology*, Chicago, 1905, p. 198.)

"Although Small does not discuss the relation of crime to these various social interests, it is not difficult to see how the various social attempts to control the conduct of men by penal methods are more or less closely related to an attempt to conserve these interests against those acts which threaten them.

"A theory of social interests much more closely related to the problem of criminal repression is that propounded by Roscoe Pound. . . .

"For jurisprudence, for the science that has to do with the machinery of social control or social engineering through the force of politically organized society, it is no less true that individual interests are capable of statements in terms of social interests and get their significance for the science from that fact." (Pound, p. 32.)⁸⁵

⁸⁴See Pound, *The Scope and Purpose of Sociological Jurisprudence* (1912) 25 HARV. L. REV. 489; Pound, *The End of Law* (1914) 27 HARV. L. REV. 195, 225 ff; POUND, *CRIMINAL JUSTICE IN AMERICA* (1930), c. I.

⁸⁵GILLIN, *op. cit. supra* note 79, p. 17, 18; See also POUND, *CRIMINAL JUSTICE IN AMERICA* (1930) c. I.

Pound makes his own classification of the social interests as follows:⁸⁶

1. In the general security.
The general safety, health, peace and order
The security of acquisitions
The security of transactions
2. In the security of social institutions.
Domestic, religious, political
3. In the general morals.
4. In the conservation of social resources.
5. In the general progress, economical, political, cultural.
6. In the individual life.
 - a. That the individual will shall not be subject to the will of another.
 - b. Interest in securing to the individual the possibility of a human existence.

Taking these interests as a framework Gillin has evolved the following types of crimes, a classification correlative to Pound's classification of the interests: ⁸⁷

1. Crimes against property.
2. Crimes against public peace and order.
3. Crimes against religion.
4. Crimes against the family.
5. Crimes against morals.
6. Crimes against the resources of society.

Conclusion

We have now considered the various purposes which have motivated the classification of crimes. Alphabetical arrangements and organizations based on type of crime have been discredited. Statistical groupings have been shown to be of little assistance in redrafting legislation. In most cases the proposals of criminologists are so sweeping that the criminal law as it is now known might disappear in the process of such reorganization. It is inconceivable that the legislature would sanction a reclassification based on the motive of the offender, for instance, even if it were desirable. It is obvious that if the subject is approached from the objective which rules the present inquiry, none of the foregoing are necessarily models for our purposes.

The following are tests of the validity and workableness of any new classification, seeking to effect a simplification of the statutory law on crime as it stands in New York today:

⁸⁶POUND, *OUTLINES OF LECTURES ON JURISPRUDENCE*, (4th Ed.) (1928) p. 60. See also POUND AND FRANKFURTER, *CRIMINAL JUSTICE IN CLEVELAND* (1922), p. 562.

⁸⁷GILLIN, *op. cit. supra* note 79, pp. 19-22.

1. It should assist in attaining the underlying purposes of codification. Thus, it should be flexible enough and comprehensive enough to assure the inclusion and proper arrangement within the statute of all offenses now recognized. It should prevent inconsistencies, uncertainties, and duplications among these offenses. It should minimize the possibility of too much detail; it should encourage the use of general sections covering broader situations, thus preventing loopholes which defeat the purpose of the law.

2. It should rest on some basis to be uniformly applied to all sections. Its theory should be a test on the inclusion or exclusion of any particular offense within a given group.

3. By its own test, it should be a method of determining the social necessity of continuing the penal sanction for a particular offense.

4. It should be of practical assistance now imperative in the task of reconstructing an all-inclusive penal statute, consistent in itself and logically subdivided into accessible sub-heads. The breaking down of the present law into the form of separate, disunited offenses has created a bewildering mass of chaotic material which cries aloud for its reduction into some form of logical consistency through reclassification.

5. It should be so organized as to be of assistance to workers in the field of criminal law other than lawyers: statisticians, sociologists, criminologists, etc.

Such are our objectives. It is submitted that a reclassification on the basis of Pound's classification of interests is the only proposal which would attain these objectives. Such an organization founded on such a theory should be comprehensive, consistent, and a test of the inclusion and presence of each offense with which we must deal. With this point of view the following classification is proposed as a basis for the continuance of this study:

V. A PROPOSED METHOD OF CLASSIFICATION FOR THE PURPOSE OF THE SIMPLIFICATION OF THE PENAL LAW

1. Crimes against the person of individuals.⁸⁸
2. Crimes against the general morals.⁸⁹
 - a. Sexual morality.
 - b. Other moral questions enforced with a penal sanction.⁹⁰
3. Crimes against the general security.⁹¹
 - a. Crimes against the general safety.

⁸⁸Related to the social interest in the individual life, *supra* note 86.

⁸⁹Related to the social interest in the general morals, *supra* note 86.

⁹⁰This subdividing is suggested for statistical purposes.

⁹¹Related to the social interest in the general security, *supra* note 86.

- b. Crimes against the general health.
- c. Crimes against the general peace and order.
- d. Crimes against the security of acquisitions.
 - aa. Gainful with violence
 - bb. Gainful without violence
 - cc. Malicious ⁹²
- e. Crimes against the security of transactions.
- 4. Crimes against the security of social institutions. ⁹³
 - a. Against the family.
 - b. Against organized government.
 - aa. The government itself
 - bb. The administration of government
 - c. Against religious institutions. ⁹⁴
- 5. Crimes against the security of social resources. ⁹⁵
 - a. Against the security of communal property.
 - b. Against the security of children.
 - c. Against the security of animals. ⁹⁶

It will be noted that Pound has included in his classification of interests a social interest in the general progress.⁹⁷ Whether violations of such an interest are penalized with the criminal sanction is doubted. If there are such crimes, it may be necessary to include another group to cover this subject.

* * *

It is proposed to continue this study on the basis of this classification. The next step in the study is to relate the many offenses provided by the present statutes to the groupings set out in this classification. The classification, it is reemphasized, is merely a first step toward ascertaining a reasonable basis on which to continue this study toward its major objective, a revamping of the criminal law of New York into a self-consistent and logical unity.

⁹²The subdividing is suggested for statistical purposes.

⁹³Related to the interest in the security of social institutions, *supra* note 86.

⁹⁴This subdividing is merely illustrative.

⁹⁵Related to the interest in the security of social resources, *supra* note 86.

⁹⁶This subdividing is merely illustrative.

⁹⁷*Supra* note 86.